

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 09, 2016

Hearing Room

5B

10:00 AM

8:15-15931 John J Trejo and Elsie Alfeche Baclayon

Chapter 11

#1.00 United States Trustee's Motion to Dismiss Case Pursuant to 11 U.S.C. Section 1112(b); and Request for any Quarterly Fees Due and Payable to the U.S. Trustee at the time of the Hearing

Docket 81

Tentative Ruling:

Is dismissal or conversion better?

Party Information

Debtor(s):

John J Trejo

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Elsie Alfeche Baclayon

Represented By
Michael Jones
Sara Tidd

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8:15-15931 John J Trejo and Elsie Alfeche Baclayon

Chapter 11

**#2.00 Motion For Approval Of Chapter 11 Disclosure Statement
(cont'd from 10-12-16)**

Docket 46

Tentative Ruling:

Tentative for 11/9/16:

See #1.

Tentative for 10/12/16:

Nothing new has been filed. Status?

Tentative for 8/24/16:

This is the continued hearing on adequacy of Debtor's Disclosure Statement from June 8.

An Amended Disclosure Statement ("ADS") and Plan were filed on July 29, 2016. Some issues identified by the court last time have been addressed, but very significant issues still remain.

- At p. 8, Debtors state that the anti-modification provisions of section 1123(b)(5) do not apply to the Pacific Hills property because the loan is not secured solely by the principal residence, but also by "additional property" including appliances and other property located at the address. Debtors refer to the loan documents to support this assertion but unless the subject agreements are very different from the norm, this works against them. The creditors' claims are not secured by additional property within the meaning of §1123(b)(5). Most courts have held that incidental

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collateral such as rents, insurance proceeds (or as in this case, fixtures such as appliances) which are inextricably bound to the real estate do not change the fundamental point of the statute or change the result, which is to prevent modification of mortgages on principal residences. See e.g. *In re Lievsay*, 199 B.R. 705, 708 (9th Cir. BAP 1996) citing *In re Davis*, 989 F. 2d 208, 212 (6th Cir. 1993). Debtors are trying to read more into the security interest through boilerplate to escape the reach of §1123(b)(5) but this is unavailing; in standard mortgage cases (and there is no showing of anything otherwise here) it would defeat the very legislative purpose of the statute.

- At p. 18, the ADS still provides that the Class 1A and B claims are *not* secured by Debtors' principal residence because it is being converted to an investment property, i.e. future tense. But as noted in the previous tentative, the property was clearly Debtors' principal residence *on the petition date*, which is when the determination is made. See *In re Abdelgadir*, 455 B.R. 896, 898, 902-03 (9th Cir. BAP 2011); *In re Wages*, 508 B.R. 161, 164 (9th Cir. BAP 2014). Debtors still propose to modify this claim but this cannot be done absent consent.
- Debtors do not propose to pay interest on the Class 1D claim. How does that work consistent with "fair and equitable" as used in §1129(b)(2)(A)?
- The Class 2D and 2H claims now provide for interest at 5% from the petition date through the effective date of the plan. There is no provision for interest on Classes 2F, 2G, 2I, and 2J. This rate of promised interest has already drawn one objection and looks very problematic in cram down, particularly considering these are rental properties and the plan proposes a period of interest only, thus magnifying risk (and thus requiring even higher interest).
- The ADS creates two classes for disputed, contingent and unliquidated claims – one for filed claims and one for unfiled. This raises questions of impermissible gerrymandering.
- The son's expected contribution to the plan is explained at p. 38. He is

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studying to become a Registered Nurse and expects to earn (assuming he graduates at some future time and receives employment) a salary of approximately \$60,000, of which he pledges to contribute \$28,000 to the plan. Citation is made to statistics about the average compensation for registered nurses. But all of this is based on a huge dose of speculation akin to the proverbial "hail Mary" pass in a football game, and absent more will not pass opposition on feasibility grounds. The court hopes the son succeeds but it doubts that feasibility (which must focus on what exists, not what is hoped for) can be grounded on something so intangible.

- At p. 48, Debtors state that they will withdraw more than \$15,000 from a 401K retirement account in order to make the new value contribution and pay taxes and penalties for early withdrawal. No suggestion is made as to how the market testing required under *Bank of America v. 203 N. LaSalle St. Pts*, 526 U.S. 434 (1999) will be met. While this is a confirmation issue, not necessarily a disclosure issue, cumulatively it exposes the profound weakness of this plan and causes the court grave concern as to whether the effort and cost to disseminate this disclosure is justified.

Absent a better explanation as to how these fundamental obstacles are to be overcome, the court cannot in good conscience let this progress to the next step in what is probably a futile effort at confirmation.

Deny

Prior Tentative:

This disclosure statement does not contain adequate information and thus cannot be approved. There are also significant problems with the plan as proposed. Some of those problems are summarized in the UST objection and should be addressed by Debtor, particularly as concerns the §1123(b)(5) prohibition against modification of loans secured by the principal residence as of the petition date, as is implied in the treatment of Classes 1A and 1B. See e.g. *In re Abdelgadir* , 455 B.R.

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Chapter 11

896 (9th Cir BAP 2011). If argument exists for why these loans are not secured only by the residence, and thus not subject to the prohibition, that should be explained here. The UST is correct that this court does not view some incidental provision such as insurance proceeds pledged as additional collateral sufficient to nullify the prohibition. Also problematic is the fact that creditors, who are over secured, such as those of Classes 2D-J, are entitled to interest, yet no reference is made to this. Moreover, there appears to be a discrepancy between what is reported as owed, the various arrearages accrued given and an apparent lack of recent post-petition payments. Feasibility may also be a large issue, although typically this is reserved for confirmation except in extreme cases. But this could be such a case. How the son is expected to make contributions without current income should, at the very least, be explained. Similarly, the source of \$15,000 new value should be explained. The inconsistency between the treatment of unsecured creditors at p. 12, lines 9-10 and p. 32, lines 1-7 (5% vs 21% dividends, respectively) requires reconciliation, or at least explanation.

In addition, the court notes the following:

- A section 506 motion should be filed for the Goldfire Property. Valuations by appraisers, while useful, are only half the equation.
- There are two classes of general unsecured creditors – one is for disputed, contingent and unliquidated claims with filed claims. The total proposed payout for the two classes is the same. This could become an issue at confirmation absent some explanation for the separate classification other than as an attempt at gerrymandering.
- There is a discussion of the Absolute Priority Rule at p. 52-54. Debtors propose a new value contribution of \$15,000 if necessary. This is clearly an issue that would come up at confirmation but in meantime some explanation ought to be given for the source of such funds. Reportedly, these are coming from a retirement vehicle of some kind, but the specific source and impact of tax and withdrawal penalties, if any, is not discussed

Deny

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CONT... John J Trejo and Elsie Alfeche Baclayon

Chapter 11

Party Information

Debtor(s):

John J Trejo

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Elsie Alfeche Baclayon

Represented By
Michael Jones
Sara Tidd

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8:14-17204 Bethzabe Martinez

Chapter 11

**#3.00 Post Confirmation Chapter 11 Status Conference RE: Voluntary Petition
(cont'd from 5-11-16)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING
MOTION IN CHAPTER 11 CASE FOR THE ENTRY OF A FINAL
DECREE AND ORDER CLOSING CASE ENTERED 8-29-16**

Tentative Ruling:

Tentative for 5/11/16:
See #2.

Tentative for 1/6/16:
Continue to confirmation hearing which will be set in #6.

Tentative for 8/12/15:
Continue to December 2, 2015 at 10:00 a.m. to coincide with adequacy of
disclosure hearing.
What is status of insurance as raised by UST on June 24?

Tentative for 6/24/15:
Deadline for filing plan and disclosure statement: October 1, 2015
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.
Debtor to give notice of claims bar deadline by: July 1, 2015

Party Information

Debtor(s):

Bethzabe Martinez

Represented By
Matthew D Resnik

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Bethzabe Martinez

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8:14-16908 Shamoail Chehregosha

Chapter 7

Adv#: 8:15-01112 Juarez v. Chehregosha

#4.00 STATUS CONFERENCE RE: Complaint for determination of dischargeability of debt
(con't from 9-1-16)

Docket 1

Tentative Ruling:

Tentative for 11/9/16:
Dismiss for failure to prosecute.

Tentative for 9/1/16:
Why no status report from plaintiff? Dismiss for failure to prosecute?

Tentative for 4/7/16:
Shouldn't there be a class certification hearing under FRCP 23 before a trial date is set?

Tentative for 11/5/15:
Deadline for completing discovery: February 29, 2016
Last date for filing pre-trial motions: March 2, 2016
Pre-trial conference on: April 7, 2016 at 10:00 a.m.
Joint pre-trial order due per local rules.

Tentative for 8/13/15:
See #12.

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CONT... Shamoail Chehregosha

Chapter 7

Debtor(s):

Shamoail Chehregosha

Represented By
Andrew S Bisom

Defendant(s):

Shamoail Chehregosha

Pro Se

Plaintiff(s):

Jose Flores Juarez

Represented By
Peter I Beck
Robert W Skripko Jr

Trustee(s):

Karen S Naylor (TR)

Pro Se

Karen S Naylor (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

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8:16-11588 Long-Dei Liu

Chapter 11

#5.00 Motion for Order Approving Stipulation for Use of Cash Collateral Pursuant to 11 U.S.C. Section 363(c)(2) and Federal Rule of Bankruptcy Procedure 4001(b)

Docket 187

Tentative Ruling:

Grant. Appearance optional.

Party Information

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen